

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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PATSY'S ITALIAN RESTAURANT, INC.,
PATSY'S BRAND, INC.

Plaintiffs,

-against-

ANTHONY BANAS d/b/a PATSY'S,
PATSY'S PIZZERIA,

Defendants.

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PATSY'S ITALIAN RESTAURANT, INC.,

Plaintiff and
Counterclaim Defendant,

-against-

MEMORANDUM AND ORDER

06-CV-0729 (RER)

ANTHONY BANAS d/b/a PATSY'S and
PATSY'S PIZZERIA TRATTORIA IMPAZZIRE,
ALLAN ZYLLER d/b/a PATSY'S and PATSY'S
PIZZERIA TRATTORIA IMPAZZIRE, AL &
ANTHONY'S PATSY'S, INC., I.O.B. REALTY,
INC., PATSY'S, INC. and BSZ REALTY CORP.,

Defendants and
Counterclaim Plaintiffs.

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RAMON E. REYES, JR., U.S.M.J.:

Plaintiffs Patsy's Italian Restaurant, Inc. and Patsy's Brand, Inc. (collectively "Plaintiffs")

has filed a motion in limine to exclude various types of evidence from the upcoming trial, which is set to begin on March 10, 2008. (Docket Entry 81 and 142, respectively) The following contains the Court's rulings on the various parts of Plaintiffs' motion:

1. The motion to exclude all evidence relating to I.O.B. Realty's proceedings before the Patent and Trademark Office ('PTO') and Trademark Trial and Appeals Board ("TTAB") (*Id.* at 2-3), is denied as the evidence is relevant to the issues of

- the validity of the parties' various trademark and service mark registrations, and the cancellation of those registrations;
2. The motion to exclude various portions of the Court's August 2007 Opinion & Order (*id.* at 3-4), is granted;
 3. The motion to exclude the deposition of Mrs. Arles (*id.* at 4-8) is denied, although the Court cautions defendants that it prefers to have Mrs. Arles testify in person;
 4. The motion to exclude the video deposition testimony of Salvatore Scognamillo regarding the purported consent agreement (*id.* at 8-9), is denied without prejudice to Plaintiffs' argument that the Court should disregard the testimony;
 5. The motion to exclude the defenses of unclean hands, fraud at the PTO, and laches defenses (*id.* at 11-12), is denied as the motion is untimely. The motion should have been made months ago. For the same reason, the Defendants' motion to amend the counterclaim (Docket 154) and the Plaintiffs' motion to dismiss/strike the counterclaim (Docket 155) are denied as moot;
 6. The motion to exclude the 15 U.S.C. § 1111 defense relating to Plaintiffs' failure to display a tm or ® symbol (Docket 81 and 142 at 12-13), is granted; and
 7. The motion to preclude defendants from calling Mr. Zivin as a witness to testify regarding the PTO and TTAB proceedings (*id.* at 13), is denied in light of the fact that the issues of the validity of the parties' various trademark and service mark registrations, and the cancellation of those registrations will be tried to the Court, and not a jury;
 8. The motion to preclude evidence "relating to miscellaneous irrelevant issues" (*id.* at 14), is granted.

SO ORDERED.

Dated: **March 6, 2008**
 Brooklyn, New York

Ramon E. Reyes, Jr.
Ramon E. Reyes, Jr.
United States Magistrate Judge